AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF UKRAINE ON SCIENTIFIC AND TECHNOLOGICAL COOPERATION

The Government of the United States of America and the Government of Ukraine (hereinafter referred to as "the Parties");

Realizing that international cooperation in science and technology will strengthen the bonds of friendship and understanding between their peoples and will advance the state of science and technology to the benefit of both countries, as well as mankind;

Affirming that in sharing responsibilities for contributing to the world's future prosperity and well being, they should make further efforts to strengthen their respective national research and development policies;

Considering science and technology cooperation as important for the development of national economies; and

Wishing to establish dynamic and effective international cooperation between the full array of scientific organizations and individual scientists in the two countries;

Have agreed as follows:

ARTICLE I

1. The purposes of this Agreement are to strengthen the scientific and technological capabilities of the Parties, to intensify and broaden relations between scientific and technological communities in both countries, and to promote scientific and technological cooperation in areas of mutual interest and benefit for peaceful purposes.

2. The principal objectives of this cooperation are to provide opportunities to exchange ideas, information, skills, and techniques and to collaborate on scientific and technological endeavors of mutual interest.

ARTICLE II

1. The Parties shall encourage cooperation through exchanges of scientific and technical information; exchanges of scientists and technical experts; the convening of joint seminars and meetings; training of scientists and technical experts; the conduct of joint research projects; and other forms of scientific and technological cooperation as may be mutually agreed upon.

2. Cooperation under this Agreement shall be based on shared responsibilities and equitable contributions and benefits, commensurate with the Parties' respective scientific and technological strengths and resources.

ARTICLE III

1. The Parties shall encourage and facilitate, where appropriate, the development of direct contacts and cooperation between government agencies, universities, research centers, institutions, private sector firms and other entities of the two countries.

2. Government agencies and other designated entities of the Parties, such as those mentioned in paragraph 1 of this Article, may conclude under this Agreement implementing memoranda of cooperation, and other arrangements, as appropriate, in specific areas of science and technology. These implementing arrangements shall cover, as appropriate, topics of cooperation, procedures for transfer and use of equipment and funds, and other relevant issues.

3. This Agreement is without prejudice to existing science and technology agreements in force between the United States and Ukraine. The Parties or their appropriate agencies may amend such agreements, as may be agreed, to make those agreements subject to the provisions of this Agreement.

ARTICLE IV

Cooperative activities under this Agreement shall be conducted in accordance with the applicable laws, regulations, and procedures in each country and shall be subject to the availability of funds and personnel.

ARTICLE V

Scientists, technical experts, governmental agencies and institutions of third countries or international organizations may, in appropriate cases, be invited by agreement of both Parties to participate, at their own expense unless otherwise agreed, in projects and programs being carried out under this Agreement.

ARTICLE VI

Each Party shall designate a coordinating agency and an Executive Secretary to conduct administrative affairs and, as appropriate, to provide oversight and coordination of activities under this Agreement.

ARTICLE VII

1. Scientific and technological information of a non-proprietary nature resulting from cooperation under this Agreement, other than information which is not disclosed for commercial or industrial reasons, shall be made available, unless otherwise agreed upon in writing, to the world scientific community through customary channels and in accordance with normal procedures of the agencies and entities participating under this Agreement.

2. The treatment of intellectual property and business confidential information created or furnished in the course of cooperative activities under this Agreement is provided for in Annex I. Provisions for security of information and transfer of technology are set forth in Annex II. Annex I and Annex II shall form an integral part of this Agreement, and shall apply to all activities conducted under the auspices of this Agreement unless otherwise agreed in writing by the Parties, their government agencies or their designees.

ARTICLE VIII

1. Each Party shall, as appropriate, facilitate entry into and exit from its territory of appropriate personnel and equipment of the other Party, engaged in or used in projects and programs under this Agreement.

2. Each Party shall, as appropriate, facilitate prompt and efficient access of persons of the other Party, participating in cooperative activities under this Agreement, to its relevant geographic areas, institutions, data, materials and individual scientists, specialists and researchers as needed to carry out those activities.

3. Each Party shall facilitate, in accordance with its laws and regulations, duty-free entry of necessary materials and equipment provided for use in cooperative activities under this Agreement.

4. Commodities acquired, including by the United States, its recipients (and subcontractors or subgrantees) or by foreign governments, for Ukraine that were financed with United States technical assistance provided for Ukraine under this Agreement, shall be exempt from taxation, including value-added taxes (VAT) and customs duties, imposed by Ukraine. Commodities include any material, article, supply, goods or equipment. These same rules apply to all funds provided for in this Agreement, including services, grants and all monetary assistance. Any assistance provided by the United States Government under this Agreement is assistance under the Agreement between the Government of the United States of America and the Government of Ukraine regarding Humanitarian and Technical Economic Cooperation dated May 7, 1992.

ARTICLE IX

In the event that differences arise between the Parties with regard to the interpretation or application of the provisions of this Agreement, the Parties shall resolve them by means of negotiations and consultations.

ARTICLE X

1. This Agreement shall enter into force when the Parties notify each other, through diplomatic channels, of the completion of their respective internal requirements necessary for the entry into force of this Agreement. The date of last notification will be deemed to be the date of entry into force of this Agreement.

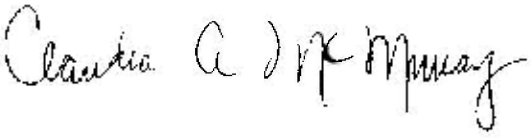
2. This Agreement shall remain in force for five years. The term of the Agreement may be extended for further five-year periods by written agreement of the Parties through diplomatic channels to the extent practicable ninety (90) days prior to the end of the Agreement. This Agreement may be terminated by either Party by written notification to the other Party through diplomatic channels of its intention to terminate the Agreement at least ninety (90) days prior to its end. Unless otherwise agreed by the Parties, the termination of this Agreement shall not affect the completion of any cooperative activity undertaken under this Agreement and not yet completed at the time of the termination of this Agreement.

3. This Agreement may be amended by written agreement of the Parties including through signing respective protocols constituting an integral part of this Agreement.

4. Upon entry into force, this Agreement supersedes the Agreement between the Government of the United States of America and the Government of Ukraine on Scientific and Technological Cooperation signed by the Parties on June 5, 2000, as extended.

Done at Washington, DC, in duplicate, this Fourth day of December 2006, in the English and Ukrainian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
UKRAINE:

ANNEX I
Intellectual Property Rights

Pursuant to Article VII of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed to by the Parties or their designees in writing.

B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.

C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with the Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation of rights between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

II. Allocation of Rights

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in paragraph II (A) above, shall be allocated as follows:

(1) Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

(2) (a) For intellectual property created during joint research (including joint research projects pursuant to the implementation arrangements carried out by

means of visits of participating personnel), for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own territory. Rights and interests in third countries will be determined in implementing arrangements. If research is not designated as "joint research" in the relevant implementing arrangement, rights to intellectual property arising from the research will be allocated in accordance with paragraph II (B) (1). In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

(b) Notwithstanding paragraph II (B) (2) (a), if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests worldwide. Persons named as inventors of the property shall nonetheless be entitled to royalties as provided in paragraph II (B) (2) (a).

III. Business Confidential Information

In the event that information identified by the Parties or their designees in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

ANNEX II
Security Obligations

Pursuant to Article VII of this Agreement:

I. Protection of Sensitive Technology

Both Parties agree that no information or equipment requiring protection in the interest of national defense or foreign relations and classified in accordance with its applicable national laws and regulations shall be provided under this Agreement. In the event that information or equipment which is known or believed to require such protection is identified in the course of cooperative activities pursuant to this Agreement, it shall be brought immediately to the attention of the appropriate officials and the Parties shall consult to identify appropriate security measures to be agreed upon by the Parties in writing and applied to this information and equipment and shall, if appropriate, amend this Agreement to incorporate such measures.

II. Technology Transfer

The transfer of unclassified export-controlled information or equipment between the Parties shall be in accordance with the relevant laws and regulations of each Party. If either Party deems it necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of such information or equipment shall be incorporated into the contracts or implementing arrangements. Export controlled information shall be marked to identify it as export controlled and identify any restrictions on further use or transfer.